

INTERIM REPORT
OF THE
SENTENCING POLICY STUDY COMMITTEE

April 2006

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Interim Report

I. Statutory Directive:

The Committee shall do the following:

- (1) Determine the proper category for each felony and misdemeanor, considering the nature and degree of harm likely to be caused by the offense, including whether it involves property, irreplaceable property, a person, a number of persons, or a breach of the public trust, the deterrent effect a particular classification may have on the commission of the offense, the current incidence of the offense in Indiana, and the rights of the victim;
- (2) Recommend structures to be used by a sentencing court in determining the most appropriate sentence to be imposed in a criminal case, including any combination of imprisonment, probation, restitution, community service, or house arrest;
- (3) Determine the impact of the effect of suggested sentencing structures on the Department of Correction and local facilities with respect to both fiscal impact and inmate population;
- (4) Review community corrections and home detention programs for the purpose of standardizing procedures and establishing rules for the supervision of home detainees; and establishing procedures for the supervision of home detainees by community corrections programs of adjoining counties;
- (5) Determine the long range needs of the criminal justice and corrections systems and recommend policy priorities for those systems;
- (6) Identify critical problems in the criminal justice and corrections systems and recommend strategies to solve the problems;
- (7) Assess the cost effectiveness of the use of state and local funds in the criminal justice and corrections systems;
- (8) Recommend a comprehensive community corrections strategy;
- (9) Propose plans, programs, and legislation for improving the effectiveness of the criminal justice and corrections systems; and,
- (10) Evaluate the use of faith-based organizations as an alternative to incarceration.

II. Summary of the Work:

A. Introduction and Overview:

During 2005 the Sentencing Policy Study Committee met four times, on the following dates:

- August 30, 2005
- September 23, 2005
- October 12, 2005
- October 28, 2005:

The Chair and the Committee determined that there would be four (4) issues that would be discussed during the term of the Committee including the following:

- A review of felony sentences to determine proportionality;
- The management of sex offenders and the sex offender registry;
- Community Corrections; and,
- Reentry Courts.

Sentence proportionality relates to the proportion of offenders committed to the Department of Correction who are confined for very long periods of incarceration, yet are not serving a sentence of “life, without parole”. It is anticipated that by determining who these offenders are, from which county they were committed, and the manner in which they were charged, and the sentenced ultimately ordered, that information can be shared with sentencing court judges and prosecutors to promote more equity in the sentencing process.

The ***Sex Offender Registry*** is the registry that requires a convicted sex offender to enter demographic and residency information that can be accessed by the public as a means to protect residents of neighboring homes, businesses and schools from the convicted offenders. The Committee feels that the definition of “sex offender” needs to be reviewed, clarity needs to be added to the definition of a sexually violent predator, sanctions for sex offenders should be assessed, proportionality and treatment in the charging and disposition of sex offenders should be evaluated and how current methods of managing the sex offender registry can be improved to further protect the public. Issues such as “permanent probation” for sex offenders and whether the current

classification of sex offenses is comprehensive also were identified as potential topics of discussion for the Committee. The Committee also expressed an interest in determining how other states are addressing and managing sex offender crimes and issues.

Community Corrections was identified as a focus for the Committee because of the tremendous potential the services provide for the safety of the public both as an alternative to state prison incarceration and as a component of a more integrated and gradual transition and re-entry of an incarcerated felon to the community. Currently, 72 counties participate in the Community Corrections Act program generating \$27 million from project income and diverting numerous offenders to the department of Correction. Similarly, 97% of offenders confined in the Department of Correction will return to the community, so a thoughtful and successful transition process must be developed. As such, community correction programs and services are an integral to an overall strategy to improve public safety, individual offender case plan development and budget outcomes. Numerous potential topics were identified for review and discussion including defining and implementing “best practice and “what works” services, development of further flexibility in the management of the services, expansion of faith based organization in the service delivery, evaluation of tax credits for businesses that gainfully employ offenders, and appropriate incentives for continued expansion of community corrections services.

These discussions also naturally include the establishment of **pretrial services for offenders**. The Committee believed that effective development and management of **pre-trial** services may be a means to increase public safety even further and that assessment of a fee for these services to the participant may be a potential manner to fund these services. Various legal issues were identified in the development of any potential legislation to enable further development of pre-trial services, including the “legal status” of an offender who participates in these programs and then is eventually found “not guilty”. Therefore the Committee accepted the suggestion that pre-trial services not be considered jail diversion, but bail/bond diversion. There was concurrence however, that these services should be reserved for people who are not a threat to public safety. This therefore would necessitate the quality assurance management of an effective offender risk assessment as well as an effective assessment tool for the individual needs of the offenders; needs that must be linked to community services to improve public safety outcomes.

Reentry Courts are viewed by the Committee as an effective and vital partner with community corrections and a means to improve public safety outcomes. The effective use of a reentry court can permit the

proper assessment of offenders, the specific and individually tailored probation **or parole** service and supervision plan for the offender, and a coordinated and integrated approach to supervision and treatment. In essence, effective service linkage and treatment alternatives enhance public safety and as such go hand in hand with the purpose of the courts. The Committee also felt that fees assessed to a participant can assist in the funding of the courts. There appeared to be a consensus that a reentry court provides the structure, the monitoring and the service linkage to community agencies and organizations that enhance public safety, improve individual offender behavior and decrease taxpayer costs. Assessment of the offender both for public safety risk and individual service needs is seen as a significant aspect of reentry courts.

B. Testimony at The Four Committee Meetings

The first meeting focused on orienting and introducing the priorities of the Committee to the members. After the first Committee meeting, each Committee' meeting focused on the agreed upon priorities and each topic was provided significant time to introduce and discuss the issues of community corrections, re-entry courts, payment of pre-trial supervision fees and the management of sex offenders in the community. Testimony on these issues was received from judges, probation and community corrections staff, prosecutors, the Indiana Judicial Center as well as staff of the Indiana Department of Correction. Meeting 2 focused on reentry courts, pretrial fees for treatment and supervision as well as emphasized community corrections and potential legislation. Meeting 4 was dedicated to listening and discussing issues related to sex offenders as well as a general discussion concerning the topics and proposed legislation.

Meeting 2, which focused on reentry and pretrial fees for supervision and treatment began with testimony from the Commissioner of Correction. Specifically the Commissioner highlighted the efforts of the Department to ensure:

1. The Department of Workforce Development will distribute basic offender information to the Workforce Investment Boards which will then have the job of interviewing an offender prior to the inmate leaving prison to assess job skills;
2. The Family and Social Services Administration is involved in working out a plan for each offender to meet basic human service needs. Offender eligible for food stamps will receive them within 30 days of release as an appointment card will be in hand when the offender leaves a correctional facility and RX for Indiana applications will be available for

offenders who qualify for Medicaid so they can get more than 30 days medications if needed once they re-enter the community;

3. Offenders scheduled for release can get SSI and disability if determined eligible by the Social Security Administration because the application will be completed to release;

4. Money management and life skills are taught to ex-offenders;

5. The Bureau of Motor Vehicles provide a photo ID to an offender upon institutional release to enable an ex offender to get an apartment and a job...two of the most serious obstacles to an offender upon release from incarceration

The reentry court discussions provided an opportunity for the Committee to listen and discuss the existing successes of reentry courts; specifically in Marion and Allen Counties. The focus of the testimony indicated that a coordinated process of re-orientating an offender to the community enhanced public safety by improving supervision and better linking offenders with needed services in the community. Whereas the Marion County model, which is a component of the Marion County Drug Treatment Program, testimony received both from Marion and Allen counties placed a tremendous amount of importance on proper risk assessment and individual offender service need assessment, linkage of service needs to community services, effective court monitoring and follow-up and funding the sustain the courts. Specific information about the Allen County Re-entry Court was provided by Judge John Surbeck, who endorsed mandatory, rather than voluntary use of reentry courts for all offenders released from the Department of Correction. His testimony included the following:

1. Except for infirmed offenders, the Court accepts all ex-offenders.

2. The offender must apply for admittance to the 12- month program, but can be given an early release upon authority of the Parole Board or Sentencing Judge.

3. The offender must agree to comply with all aspects of the program.

4. The program is operated in conjunction with community corrections, but he personally sees the offender once a month. A strong case management team works on the offender's program and tracks progress every week as well.

5. Significant success has been achieved by the Court staff to arrange and facilitate employment for these offenders, though housing remains a significant challenge;

6. Court staff also has worked successfully to manage any mental health issues via experts working directly with the offender.

The Judge concluded his remarks with a statement that recidivism is down with these individuals. The rate is 34%, versus 66% prior to the program being initiated. He would like to see state-wide enabling of Re-

Entry courts via legislation he felt was needed (Which in fact, was enacted during the 2006 Session and signed into law).

Additional testimony on the use of pretrial services was presented that indicate the potential to safely and effectively manage specific people charged with a crime in the community. The Committee considered HB 2005-1055 which addresses the issue of pretrial fees for supervision. Proponents of pretrial fees and supervision indicate that:

- The courts provide immediate treatment to defendants who could benefit most from the services rather than waiting until a determination of guilt has been made which could take months;
- Fees are a less cost than pretrial incarceration ; and,
- Decision(s) about program eligibility and management are strictly up to the judges and judges can reduce or waive fees for the indigent and decide who is eligible.

Opponents of pretrial services **fees** (including the Public Defenders Council) indicate:

- Legislation may provide an unintentional bias against the “presumption of innocence” concept (i.e., if someone who is charged with a crime is ordered to be admitted into a pretrial supervisory program before a determination of guilt or innocence is made).
- No consistent and uniform standards for the services exist. There need to be standards of some sort rather than leaving everything up to the judge’s discretion.
- There is a question of fairness. If someone chooses not to participate, chances are they will go to jail while those who participate remain free (all before a decision of guilt or innocence has been made).
- There may be an issue of constitutionality. Would the state be compelling behavior before a determination of guilt has been made?

The Chair expressed concerns about offenders who are released on their “Maximum Release Date” thereby not being eligible for community transition programs. Instead, these offenders are required to be released with no formal supervision. It was the impression of the Chair that these probably represent a more serious offender who potentially could cause significant public safety concerns upon return to the community. It was on this basis that the Chair felt mandatory participation in community transition was a meaningful benefit to public safety.

In Meeting 3, the Commissioner of Correction indicated that the Department has initiated many efforts to improve: a) accountability for the existing funds, b) grant awards processes by focusing on evidenced based and outcome orientated data to assist in making the decisions as well as c) the fiscal and financial infrastructure's accountability to ensure more accountability and efficiency in the use of taxpayer funds. A significant effort undertaken by the Department is a long terms needs and risk assessment which will accompany an offender upon admittance to the Department and upon release. The Department has established 4 pilot programs at their facilities testing these procedures, and planned to implement a state-wide program upon completion of the pilots

The testimony received on community correction indicates that the expansion of the program by providing an incentive to join the program would be a positive step. Over \$27 million in project income is generated by the community correction grants throughout the state and greater accountability and more productive outcomes must be instilled in that process. The Committee recognized the efforts of Commissioner Donahue in implementing many correctional initiatives and services using his authority already existing by current statute so as to reduce the adult recidivism rate from 38%.

The Department of Correction is aggressively pursuing a clear focus for funding, a fiscal and accounting means to support those funding decisions, as well as appropriate training and evaluation to promote subsequent and additional improvements. Currently discussions are being undertaken to evaluate the funding formula for community corrections as well as determine if participation of the local parole staff and the workforce development Department staff could improve community partnerships that would promote greater offender accountability and therefore increase public safety.

In Meeting 4, a significant amount of testimony and discussion was received on the management of sex offenders. The Department of Correction testified in support of GPS monitoring of sex offenders. It was recognized that there may be problems in mountainous regions or in basements with the transferring of data in real time, this is recorded and will be transmitted when the signal is strong (matter of seconds). Another concern was the location of these offenders upon their release. In particular, the location of these offenders near daycare centers and schools was mentioned. The standard distance that a sex offender must stay from one of these places is 1000'. The Department said that requirements like these have caused offenders to move to rural communities.

The Committee received information as to how sex offenders are managed when convicted in one state and supervision is transferred to a

different state, and heard about the complexities of this process when considering the mandatory supervision of these offenders if they are residents of the receiving state or have family and/or employment in the receiving state. These complexities include victim notification requirements, identification of residency that does not conflict with Indiana law pertaining to sex offenders and continuity of treatment services to promote public safety.

Testimony from prosecutor representative indicated that their concerns involve gaps in the current registry laws as well as the unintended consequences caused by these gaps, as well as the confusion in managing the registry (which most likely will be resolved by the impending management of the registry by the Department of Correction. Participation in the National Sex Offender Registry was discussed and because Indiana does not have a single data source, the effectiveness of that participation is suspect. A potential manner of more effectively managing this issue probably rests partially on web-enabled technology. Lifetime parole for sex offenders was discussed with the discussion eventually identifying the cost of the additional parole officers that would be required.

III. Proposed Legislation:

The committee considered the following preliminary drafts of legislation that would:

- Establish a reentry court under a court holding felony, misdemeanor or juvenile jurisdiction over certain persons released from the Department of Correction and authorizes the court to provide reintegration services to persons released from the Department, for a period of no more than 365 days, and establishes a procedure for approval of a reentry court and authorizes the court to establish reasonable fees (PD 3394); and,
- Authorize a court to require a person charged with an offense who is placed on bail and supervised by a probation officer or pretrial service agency to pay a pretrial services fee to defray the cost of supervision, if the person has the financial ability to pay the fee, and the court finds by clear and convincing evidence that supervision is necessary to ensure the appearance of the person in court, and the physical protection of another person or the community. The draft also would prohibit the Bureau of Motor Vehicles from issuing or re-issuing a license of a person who has not paid the pretrial services fee (PD 3397).

At the October 28, 2005 Committee meeting, the Committee voted to approve these two preliminary legislative drafts. The vote on PD 3394 was 13 yeas and 1 nay, while the vote on PD 3397 was 12 yeas and 1 nay for introduction in the 2006 General Assembly.

IV. Final Report:

The committee is required to file a final report with the Legislative Council by November 1, 2006.